Newfoundland Club of America, Inc.
Regular Board of Directors Teleconference Meeting
8:00 p.m. EDT
15 October 2015

US toll number: (530) 881-1212
US toll-free number: (855) 212-0212

Committee chairperson call in and times:
• – TBA.

Meeting ID: 860-250-452#
Meeting wall & Meeting PIN: 1859
https://www.startmeeting.com/wall/860-250-452

Using the (530) 881-1212 telephone number saves the NCA on teleconference expense; please verify your unlimited long distance status.

Agenda

1. AKC Delegate’s Report (David Helming).

2. Approval of minutes:
   2.1. September 17, 2015 Regular Board Meeting; pp. 6 – 11.
   2.2. October 1, 2015 Special Board Meeting; p. 12

3. President’s Report (Pam Saunders)
   3.1 (See committee reports)

4. First Vice President’s Report (John Cornell):
   4.1. The Dogs’ of the Dow account is almost holding in the third quarter. October has allowed for real gains. The account, as of October 7th, is not above $30,000, but is not far off that pace at $29,020 - as reported to the CTMB by Andy Zinsmeyer.
   4.2. Precious Newfoundlands Fundraising as of October 7, 2015: 289 donations for contributions of $37,746.00. (Most of the money is coming from non NCA members and many of them are anonymous.)
   4.3. The CTMB awarded SENC a grant for veterinary care of a rescue dog named Mojo.

5. Second Vice President’s Report (Lynne-Powell).
   (See Committee Reports)
6. Recording Secretary’s Report (Steve Britton):
   6.1. Prepared/compiled written synopses of last meeting’s officer and committee reports for inclusion in board minutes.
   6.2. Prepared bulletin board and drafted meeting minutes for September 17, 2015 regular board meeting.
   6.3. Prepared bulletin board and drafted meeting minutes for October 1, 2015 special board meeting.
   6.4. Prepared October agenda and meeting packet.
   6.5. Compiled a PDF response (from an applicant) refuting a previous received objection to a membership application. Forwarded the compiled PDF to board members under separate executive cover. (Note: For reviewing purposes, board members are reminded that the original document objecting to the applicant was forwarded to board members in the August 20, 2015 executive session meeting packet.)
   6.6. Forwarded some AKC information on behalf of our club’s AKC delegate.

7. Corresponding Secretary’s Report (Pam Rubio):
   7.1. No correspondence to report at agenda deadline time.

8. Treasurer’s Report (Mary L. Price)
   8.3. Fall Face-to-Face Meeting – November 20 – 22, 2015.

9. Committee Reports:
       *RPC needs to start the process of Board review on the new content for the previously approved tutorial project. RPC requests that the Board agree to a continuing stream of review and approvals, as with LifeStages. If the Board approved 4 or 5 topic groups per month, it would take 5-6 months to get through the initial topics (content) needed for launch. There are approximately 80 ‘question and answer’ topics in 20 topic groups that are ready for review and approval. We also need to plan how these will be provided to the Board for review and approval.*
   9.2. Judges Education Committee proposed article; pp. 15 – 16.
   9.4. Digital Distribution Committee (DDC); p. 23.
   9.5. Specialty Show Committee – revisit decision to host 2018 & 2019 National Specialties in Frankenmuth.
10. Executive Session; pp. 27 – 46:
   10.1. URL Link to RPC Tutorial; p. 28.
   10.2. Follow up to a letter sent to a member (postponed from July board meeting).
   10.3. Consideration of Objected to Membership Application
         (Scheduled for vote at October meeting.)
   10.4. CTMB comments and recommendation – AKC CHF Health Conference participation;
         Postponed from September.
   10.5. Pending Membership Applications (Mary Lou Cuddy, membership chair);
         pp. 29 - 46.

11. Unfinished Business and General Orders
   11.1. Develop criteria for the NCA Good Sportsmanship Award
         (from 08.21.14) – postponed to 2015 fall face-to-face meeting.
         Investigate the development of an NCA members-only section of the NCA Website
         and the logistics for log-in and passwords with content to be determined later. A
         report will be due back to the Board by the January 6, 2015 agenda deadline. (Pat
         Randall – March 2015 – postponed to 2015 fall face to face meeting.)
   11.3. Discussion Item: We have spent an enormous amount of money on our database,
         but its utility is very limited. It does not have specialized queries to allow on to obtain
         a selection of dogs with the same sire, same dam, particular clearances, etc.
         I move that we refer to the database committee a motion that we provide a read only
         clearance to individuals that would like to access the database via an external SQL
         client. If we end up using another vendor’s software to handle the membership
         renewals, dues, etc. this should not entail an enormous security issue. (Pat Randall
         – originally from 3.19.15 – postponed to 2015 fall face to face meeting.)
   11.4. I propose that all future NCA National Specialties following the 2017 National
         Specialty be held at the same central location. Possible locations could be
         Frankenmuth, or Purina Farms.
         This would eliminate always having to search for a regional club willing to take on
         task on in the past, and it has worked well. We know the pitfalls. (Pam Rubio) such a
         huge endeavor, and make our National Specialty truly National. Having the Specialty
         in one central place would also bring down the cost, as contracts for tenting, lodging,
         power etc. could be negotiated for multiple years. NCA has had to take this task on
         in the past, and it has worked well. We know the pitfalls. (Pam Rubio; June 18,
         2015; this item was Referred to Specialty Show Committee July 16, 2015 –
         postponed to 2015 Fall face to face meeting).
   11.5. Database Committee – Update.
   11.7. Rename committee to Titlist Database.
   11.8. Distinguished Member Committee – Revisit inventory.
11.9. International Liaison Committee Job Description Amendment(s) – postponed to 2015 fall face to face meeting.

11.11. Consideration Top Show Dog, Top Sire, Top Dam and similar awards (review) – postponed to Face-to-face meeting.

11.12. Curry and Drury Memorial Award Medallions.


12. New Business:

12.1. For Discussion: I came across an article that was written by a Connecticut attorney which originally appeared in a Connecticut non-profit journal. It discusses the appropriate/inappropriate use of email voting by boards of directors and unanimous written consent (no action is requested – only a FYI for board members). Steve Britton; pp. 24 – 26.

12.2. November (Face-to-Face) 2015 Meeting Packet Deadline is Thursday, November 1, 2015.

12.3. If the board chooses to meet at its regular schedule date on December 17, 2015, that meeting’s deadline is December 3, 2015.

2015 – 2016 NCA Board Member Directory

**President:** Pam Saunders  
26825 NW West Union Rd  
Hillsboro, OR 97124-8182  
Home: 503/647-2472  
Cell: 503/705-7181  
Email: pssaunders@live.com

**First Vice President:** John Cornell  
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Cell: 802/363-9333  
Email: longship@gmavt.net

**Second Vice President:** Lynne Anderson-Powell  
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Home: 518/843-9892  
Cell: 518/598-3746  
Email: ncabod2ndvp@live.com

**Recording Secretary:** Steve Britton  
P.O. Box 554  
Montrose, MI 48457-0554  
Home: 810/639-6898  
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Email: stevebritton.ncaboard55@yahoo.com

**Corresponding Secretary:** Pam Rubio  
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Cell: 408/218-3577  
Fax: 408/847-2661  
Email: pamelar@qgarlic.com

**Treasurer:** Mary L. Price  
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Mount Horeb, WI 53572-3044  
Home: 608/437-4553  
Cell: 608/520-6929  
Fax: 608/437-4553  
Email: mlprice@mhtc.net

**AKC Delegate:** David Helming  
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Flemington, NJ 08822-5536  
Home: 908/788-4053  
Email: davidhelming@aol.com

**Director:** Mary Lou Cuddy  
1155 Raymond Rd.  
Ballston Spa, NY 12020  
Home: 518/885-5030  
Cell: 518/496-7377  
Email: cuddyBOD@nycap.rr.com

**Director:** Roger Frey  
11120 Broadway St.  
Alden, NY 14004-9515  
Home: 716/683-1578  
Business: 716/685-2685  
Fax: 716/685-2685  
Cell: 716/481-8095  
Email: jollyroger.jollyroger1@verizon.net

**Director:** Sue Marino  
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Auburn, MA 01501-2133  
Home: 508/832-4585  
Email: Vnnewf97@charter.net

**Director:** Steve McAdams  
PO Box 370  
Green Valley, IL 61534-0370  
Home: 309/352-2244  
Email: shadrack@grics.net

**Director:** Pat Randall  
7238 Hwy 162  
Hollywood, SC 29449-5606  
Home: 843/889-5444  
Cell: 843/697-1113  
Email: pkrboard2011@comcast.net

**Director:** Donna Thibault  
PO Box 102  
Ashford, CT 06278-0102  
Home: 860/684-6106  
Cell: 860/465-7743  
Email: donnatbo@live.com

Revised: 5/26/15
## Newfoundland Club of America, Inc.
### Receipts and Disbursements
#### Sept. 4 - October 1, 2015

### INCOME

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### OVERALL TOTAL

-2,412.00
Newfoundland Club of America, Inc.
Balance Sheet
as of October 1, 2015

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Hi Steve,

The JEC would like the board’s approval to submit the attached article to the AKC “The Standard” as well as post it on Judges-L. The article was written in response to a show dog magazine article whose topic was the size (and the over-size and under-size of breeds) where the Newfoundland was mentioned specifically. The article’s author said that Newfoundlands were getting too big and that they should only be 28” in height. As there has also been a lot of email discussion on judges’ chat groups about size, we felt the article was appropriate and timely for publishing.

If the Board needs further clarification, I can call in if needed.

Thanks,

Denise

NCA JEC Chairperson
Newfoundland – What is the correct size?

There has been a lot of discussion lately about size and what is and is not in some breed standards with regards to height restrictions. The Newfoundland standard says:

"Average height for adult dogs is 28 inches, for adult bitches, 26 inches...... Large size is desirable but never at the expense of balance, structure and correct gait."

The Newfoundland Club of America's illustrated guide goes on to say this about size:

"Large size is desirable, but never at the expense of temperament, type, structure, soundness and correct movement. Size is determined by height and substance; both are of equal importance."

It is helpful in judging to have an idea of the proportions of an animal. In the Newfoundland, the following proportions are approximately correct:

1. He is slightly longer than he is tall.

2. The skeletal structure measured from the withers to the lowest part of the chest (brisket) should be at least 50% of the dog's total height. However, skin, muscle, and coat make this distance appear proportionally greater so that in profile, it appears to be approximately 55%.

3. The distance from withers to elbow is approximately 50% of the total height and from elbow to ground, about 50%. Variations in these proportions become apparent when the dog moves and appears to be "running downhill."

In summary, it should be noted that the average size of a male Newfoundland is 28 inches. There are many above and some below this number. The standard does not say this is the ideal height. Larger height is not a virtue by itself without the correct structure, heavy bone and substance to sustain it. Larger dogs must also be able to move correctly. A dog under 28 inches need not be faulted if he has the desired substance, is well proportioned and moves correctly. Obviously the same analogy holds true for our bitches.

If you have any questions, please contact the Judges Education Committee of the Newfoundland Club of America at judgesed@ncadogs.org.
JUDGES EDUCATION COMMITTEE (JEC)

Duties and Responsibilities (modified 10/31/98)
Duties and responsibilities of the Judges Education Committee (JEC) include to:

* Prepare and send packets of educational material to individuals listed in the AKC Gazette who are applying to judge Newfoundlands.

* Develop and provide materials and assist Regional Clubs in holding judges' study groups with their Regional Specialties.

* Make the necessary arrangements for Judges' Breed Study Group at National Specialties and act as hosts and tutors for those attending.

* Provide names of Breed Mentors to judges' education associations for breed presentations at meetings and seminars and to act as mentors for individual judges planning to apply for Newfoundlands as an additional breed.

* To supply a NCA breed education DVD to judges, prospective judges and judges attending National Specialty.

* Reply to questions and requests generated by a list in the AKC Gazette of all parent club Judges' Education Coordinators by AKC. Also reply to questions and requests from other sources.

The Judges Education Committee shall be comprised of not less than 7 members including the Chair. Committee members shall meet all the criteria considered for selection as a Breed Mentor. Potential JEC members are recommended by the JEC from the Breed Mentor list to the NCA Board for approval and appointment to the Committee (see criteria below).

Committee members are required to work within NCA Committee Guidelines and participate on a regular basis in meetings and educational breed seminars. When present at Specialties, where a breed study group is conducted, members shall contribute to all Committee activities. A JEC member must have the ability to lead a large seminar on the breed before judges without promoting their own kennel or bloodline.

JEC Breed Presentation Policy:

1. A request for a presentation is received by the Chair.
2. An email is sent to the committee asking for volunteers to give the presentation. The email contains the following:
   a) The name of the organization making the request
   b) The approximate location (city and/or state and venue if associated with a show) and
   c) The date proposed for the presentation
3. A presenter is secured from those committee members that have expressed interest in giving the presentation (usually because someone lives in the area or will be in the area judging, etc.)
4. The presenter and the Chair will Discuss the preparations and criteria for the requested seminar:
   a) The number of dogs required
   b) Agree on an estimate of expenses (if any)
   c) A presentation assistant, if necessary (An assistant is necessary only if the
seminar is expected to have a large number of attendees and/or has a hands-on workshop) and
d) Those members that are willing to volunteer to bring dogs.

5. The presenter is responsible for lining up dogs and any assistance they may need in accordance with the discussions that take place in item 4. Dogs in the area of the breed presentation are requested for the hands-on portion of the presentation. Volunteers can bring dogs; but only those expenses that are pre-approved for reimbursement will be reimbursed.

6. The Chair contacts the organization requesting the breed presentation and provides them with the presenter’s contact information.

7. Upon completion of the presentation, the Chair follows up with the presenter to find out how the seminar went and to obtain a list of the attendees.

8. The Chair provides the list of attendees to the JEC. If the presentation included an AKC hand-on workshop, the list of attendees will be provided to the NCA webmaster for publication on the website.

9. All pre-approved expenses relating to the presentation are submitted to the Chair.

10. The Chair reviews the expenses and submits them to the NCA Treasurer for reimbursement.

Criteria for NCA Breed Mentors and Judges Education Committee Members
To be considered for listing by the Judges Education Committee on the NCA Breed Mentor List, a person must meet the following basic criteria:

A. Owned and exhibited Newfoundlands for a minimum of twelve (12) years
B. Bred five (5) Champions as a sole breeder, not co-breeder, unless the co-breeder resides at the same premises
C. Attended Specialties
D. Be an NCA Member
E. Recommend that prospective breed mentors attend two breed seminars.

Additional criteria considered by the JEC for becoming a Breed Mentor include:

1. For purposes of educating prospective Newfoundland judges, candidates should possess an in-depth understanding of the Standard as demonstrated by all or some of the following:
   a. Has shown skills as an approved, provisional or sweepstakes judge at Specialties
   b. Has consistently bred and shown dogs of excellent quality
   c. Has owned or produced ROM dogs
   d. Has demonstrated an ability to recognize type while informally observing and discussing individual dogs or groups of dogs

2. Candidate should have objectivity which includes the ability to recognize that while there is only one correct type, there may be many acceptable styles.

3. Candidate should possess good communication skills.

4. Willingness to travel to make presentations at judges’ study groups.

Those who wish to become breed mentors should apply to the JEC documenting their qualifications.

General
All AKC approved Newfoundland judges for whom Newfoundlands are their primary breed will be on the list of Breed Mentors if they desire to participate. United States residency is not a necessary requirement to being a Breed Mentor.

JEC Members shall meet all the Basic Criteria (A, B, C, D) and Additional Criteria (1, 2, 3, 4) as delineated above.

**History**

**13-2-21:** Motion to:
- To remove the Recommended Reading List link from the Judges Education section of the NCA website and transfer the list of books to the Newfoundland Dog Library.
- To place “The Newfoundland In General” on the Newfoundland Club of America’s website (http://www.ncanewfs.org) under Newfoundland Dog Library. (http://www.newfbooks.org)
- To add the official breed standard and the Illustrated Guide to the Judges Education section of the NCA website.

**11-16-12:** JEC Breed Presentation Policy:
1) A request for a presentation is received by the Chair.
2) An email is sent to the committee asking for volunteers to give the presentation. The email contains the following: a) the name of the organization making the request, b) the approximate location (city and/or state and venue if associated with a show) and c) the date proposed for the presentation.
3) A presenter is secured from those committee members that have expressed interest in giving the presentation (usually because someone lives in the area or will be in the area judging, etc.).
4) The presenter and the Chair will discuss the preparations and criteria for the requested seminar: a) the number of dogs required, b) agree on an estimate of expenses (if any), c) a presentation assistant, if necessary and d) those members that are willing to volunteer to bring dogs. (An assistant is only necessary if the seminar is expected to have a large number of attendees and/or has a hands-on workshop).
5) The presenter is responsible for lining up dogs and any assistance they may need in accordance with the discussions that take place in item 4. Dogs in the area of the breed presentation are requested for the hands-on portion of the presentation. Volunteers can bring dogs; but only those expenses that are pre-approved for reimbursement will be reimbursed.
6) The Chair contacts the organization requesting the breed presentation and provides them with the presenter’s contact information.
7) Upon completion of the presentation, the Chair follows up with the presenter to find out how the seminar went and to obtain a list of the attendees.
8) The Chair provides the list of attendees to the JEC. If the presentation included an AKC hands-on workshop, the list of attendees will be provided to the NCA webmaster for publication on the website.
9) All pre-approved expenses relating to the presentation are submitted to the Chair.
10) The Chair reviews the expenses and submits them to the NCA Treasurer for reimbursement.

**9/15/11:** Roger Frey moved and Mary Lou Cuddy seconded that the Judges Education Committee publish the list of attendees at the committee’s judges seminars in an article developed for Newf Tide and also the NCA Website.

The Board considered some details of posting the list.
Pam Saunders moved and Pam Rubio seconded that the Board amend the previous motion that the Judges Education Committee publish an article directing members to the NCA Website where the attendees list would be posted. This list will be updated regularly. The motion failed. 6 Yes (LA, JC, KM, PSR, PS, DT); 5 No (SB, MLC, RF, MLP, PKR); 1 Abstention (MR)

Roger Frey moved and Pam Saunders seconded to amend his motion that only attendees at the Judges Education Committee’s judges seminar held at National Specialties be listed. Without objection, the motion was adopted. 1 Abstention (MR)

After discussion and amendments, the motion made by Roger Frey and seconded by Mary Lou Cuddy was passed unanimously (1 Abstention: MR) as follows: The Judges Education Committee will publish a list of attendees at Judges Education seminars held at the last four National Specialties. This list will be published in Newf Tide and on the NCA Website and updated yearly.

9/17/09: JEC DVD to be included in new members’ welcome packets
2/19/09: Approval of the DVD for inclusion in the judges’ information packet.

V34.3 4/21/03
JEC voting on breed mentors to be done by two-thirds of the JEC present at their annual meeting.

Breed Mentor criteria revised:
A. Owned and exhibited Newfoundlands for a minimum of twelve (12) years.
B. Bred five (5) champions as a sole breeder.
C. Attend specialties
D. Be an NCA Member

Recommended that prospective breed mentors attend two breed seminars so they have some interaction with the JEC.

Those who wish to become breed mentors should make an application to the JEC to document their qualifications. If not accepted, person can then bring their application and qualifications to the Board.

V34.1 11/2/02
Board will consider not just JEC membership recommendations for committee appointments, but any other NCA member who meets the established criteria.

V33.3 4/23/02
JEC to develop concept of a visual sketch to use for breed seminar presentation.

V33.1 12/1/01
Board approves article on grooming for publication in AKC Judges Newsletter. Board disapproved concept of “thumbnail sketch”

V32.4 6/19/01
Board directs Judges Education Committee to write article to be published in AKC Judges Newsletter to review the intent of the present wording of the Illustrated Guide regarding grooming.

V32.3 4/2/01

V32.1 11/3/00
Permission given to Newfoundland Club of Australia to use Illustrated Guide as a judges education tool. Translations of the Illustrated Guide or the Breed Standard will not be approved by NCA.

V31.3 5/2/00
Continue to use positive approach when discussing all dogs and increase efforts to recruit more Newfoundlands to be used in seminar presentations.

V31.1 10/30/99
Board directed the JEC: (1) to produce a new breed video in conjunction with the AKC;
(2) to professionally produce a seminar video and make it available for use by the regional clubs; (3) to write an article or series of articles for *Newf Tide* which would better inform the membership of who they are and what they do; (4) to update the slide show (the Board does not need to approve each individual slide).

Board approved all currently used JEC seminar materials and required that all future materials, revisions, or changes in policy receive advanced Board approval.

Board moved that AKC video of a JEC seminar be retired.

Board encouraged the attendance of NCA members and breed fanciers at JEC seminars on a space available basis as non-registered observers.

Regional Club Liaison directed to contact regional clubs and encourage them to sponsor NCA JEC Newfoundland seminars.

Consensus of Board that JEC formulate a plan to increase the number of dogs and strive for diversification when selecting said dogs.

NCA AKC Delegate directed to contact AKC regarding producing a new breed video as present video was produced before existing (1990) Newfoundland Standards was approved.

Board to add two (2) to four (4) new members to the JEC.

V30.1 10/31/98
Board approves amended wording for the job description for committee which includes criteria for being a committee member and an NCA Breed Mentor

V28.3 03/30/97
Board approved JEC recommendation that (budgeted) JEC funds can be utilized by members making presentations at breed seminars for covering mileage, meals, and accommodations.

V28.1 11/01/96
JEC directed to develop more definite criteria for being included on the Breed Mentor List.

V26.3 04/25/95
A video prepared on the “History of the Newfoundland” was approved for use by the Judges Education Committee and Audio Visual Committee.

V26.1 11/04/94
Judges Education Committee instructed to proceed with the AKC Imaging Program on the Newfoundland breed which can be used for general educational purposes on the Standard.

V25.3 05/22/94
Accepted clarification insert to the “Illustrated Guide” contained in the Judges Education packets regarding the disqualification criteria for gray and white and brown and white; (i.e.; “Any Newfoundland whose coat color is brown and white, or gray and white, is to be disqualified if white is, without question, the predominant color.”)

V24.1 11/14/92
Board approved recommendation encouraging Regional Clubs to hold Judges Education Seminars in conjunction with Regional Specialties, as official NCA events under the jurisdiction of the Judges Education Committee.

V24.1 11/14/92
Committee recommendations concerning Committee size and membership qualifications accepted.
Extra night's lodging and one (1) meal approved for committee members attending National Specialty (one time appeal).
The Board approved the revised “Tips for Judging Newfoundlands”.

Education Committee divided into two (2) committees to include the General Education Committee and the Judges' Education Committee.

The Illustrated Guide will be sent to all those printed in the AKC Gazette who are applying to judge Newfoundlands.

Illustrated Guide to be distributed to present judges and applying judges.

Education Committee established
Digital Distribution Committee:

Proposed amendment to

**Current Version:** Your NCA Board of Directors recognizes the value and prevalence of social networking systems, such as Facebook™, email lists, and blogs. Sometimes the rise of this entirely new class of communication has been accompanied by what has come to be viewed as cyber-harassment. Those engaged in cyber-harassment post negative comments and half or fabricated truths, often in a sarcastic manner, about individuals who cannot defend themselves. Members of the Newfoundland Club of America should consider social networking communication as public and, as such, understand that their comments reflect on themselves and the NCA. Members should consider carefully what and how they write and are encouraged to stress positive aspects of education rather than negative or sarcastic comments about owners, breeders, and/or Newfoundland fanciers.

**Proposed Version:**

Your NCA Board of Directors recognizes the value and prevalence of social networking systems, such as Facebook™, email lists, and blogs. Members of the Newfoundland Club of America should consider social networking communication as public and, as such, understand that their comments reflect on themselves and the NCA. Members should consider carefully what and how they write and are encouraged to stress positive aspects of education rather than negative or sarcastic comments about owners, breeders, The Newfoundland Club of America and/or Newfoundland fanciers.
E-mail, texting, Facebook, Twitter... these diverse modes of electronic communication and others have exploded over recent years. We are now able to communicate faster, cheaper, and with more people simultaneously than we ever have been able to before.

To busy nonprofit board members, whose schedules make face-to-face board meetings seem like a luxury, a new trend in nonprofit governance has surfaced that may run afoul of the law – the “vote” by e-mail option.

Responding to the difficulty in wrangling a geographically diverse and time-crunched board, many nonprofit organizations are now allowing directors to “vote” by e-mail. This seems like the perfect solution. An issue or opportunity arises that calls for quick response. Directors are reluctant to attend an extra meeting. Why not circulate an e-mail, ascertain that there is general agreement and take action?

The ease and speed of e-mail voting is seductively simple. But, this practice is a trap, because a board that relies on e-mail voting fails to comply with legal requirements for a proper vote, and exposes its decisions to attack. A court could invalidate informal board action, taken by e-mail vote. More likely, an attorney representing a nonprofit organization in a loan transaction might not be able to issue the “opinion of counsel” typically required by a lender, and this could delay or derail the entire deal.

**Let’s take an example.**

Playball (PB) runs a youth baseball program. A local businessman offers to donate land for fields, and arranges for a loan to cover construction costs. As interest rates are rising, PB needs to lock in the rate quickly. PB’s president tries to schedule a special meeting of the board to approve the loan, but can’t find a time when a quorum of four of the seven directors can meet.

So, she sends an e-mail seeking approval for the loan. Five directors respond, “Sure,” while two object. With a majority vote in hand, PB’s president signs the commitment letter and pays a commitment fee.

The closing approaches. PB’s attorney prepares the required opinion, which must state that: “All corporate proceedings required by law or the provisions of PB’s Certificate of Incorporation or bylaws to be taken by PB in connection with the transaction have been duly and validly taken.”

“Let me see the minutes of the meeting approving the loan,” says PB’s attorney.

“We couldn’t call a meeting, so we voted by e-mail,” responds PB’s president.
An e-mail vote – that is, a proposal circulated and responded to by e-mail – is essentially a proxy vote delivered electronically.

“Ok,” says the attorney. “You need a unanimous written consent, or to ratify the vote at a meeting or by teleconference.”

Unanimous consent is unattainable because two directors object. And, one of the five original consenting directors changes his vote. And of the remaining consenting directors, two are traveling in Asia, and cannot even meet by teleconference. With five of seven directors available, but only two who will vote in favor of the loan, PB’s attorney can’t deliver the opinion, the bank won’t make the loan, there is no deal, and PB forfeits its commitment fee.

While far-fetched, this scenario illustrates the danger of relying on informal board action.

Prohibition on Proxy Voting
In Connecticut, as in most other states, directors may not vote by proxy. The theory behind this prohibition is that the discussion and interchange of ideas that occurs at board meetings is essential to the informed exercise of the directors’ fiduciary duty to the corporation. An e-mail vote – that is, a proposal circulated and responded to by e-mail – is essentially a proxy vote delivered electronically.

The prohibition on proxy voting by directors has its roots in case law developed over many decades, known as “common law,” and eventually codified in statutes. The law regarding proper board action is substantially the same under the common law and under statutes governing business corporations and nonprofit corporations. In fact, most of the law developed in the business (or stock) corporation arena, but is applicable to nonprofit (or nonstock) organizations. But nonprofit organizations, whose directors are usually uncompensated volunteers, may be particularly prone to allowing their directors to vote by e-mail.

The principal Connecticut case on the issue of proxy voting by directors is a 1956 business corporation case called Greenberg v. Harrison. In Greenberg, the court invalidated the repayment of a loan by a corporation to its lender. The loan was to continue for one year unless earlier repayment was approved by unanimous consent of the directors. Finding that there was no unanimous consent because one director gave a proxy to another director but did not attend the board meeting, the court explained:

The affairs of a corporation are in the hands of its board of directors, whose duty it is to give deliberative control to the corporate business. This requires the physical presence of a director at directors’ meetings, and he cannot act by proxy.

Alternatives
In our example, PB’s attorney tried to implement the statutory exceptions to the requirement that directors meet in person. These exceptions can be easily adapted as modern technology progresses, and should be incorporated into an organization’s bylaws.

Teleconference
The statute allows meetings to be conducted by “any means of communication by which all directors participating may simultaneously hear each other during the meeting.” This provision allows teleconferences, and should permit web conferencing that combines voice or video communication with document sharing.

Unanimous Consent
Closer to the concept of e-mail voting, the statute also permits a board to act by unanimous written consent, if each director signs “a consent describing the action taken or to be taken.” This protects a director’s right to question the action or insist that the board discuss the matter, as a director may compel a meeting simply by withholding consent.

Combining the formality of unanimous written consent with the simplicity of e-mail, an organization’s staff member or officer may circulate the proposed resolution as a formal consent at-

E-mail is a useful tool for taking the pulse of a board. An organization may informally poll its directors and then ratify the decision with a formal in-person or teleconference meeting or by unanimous written consent.
The risk that an informal e-mail vote will prove problematic is small if the decision is unanimous, if no one litigates to pursue an objection or if no opinion of counsel is required.

An organization might also send an e-mail containing the full text of the resolution and ask each director to specifically respond and sign electronically. However, this procedure increases the risk that a technicality will be overlooked, and it is no simpler than attaching a formal consent to an e-mail.

The distinction between a formal consent circulated as an attachment to an e-mail, and an e-mailed poll of the board may seem inconsequential. But, note three important differences. Most important, all directors must vote unanimously. The directors must also receive a complete description of the proposed resolution and they must “sign” the consent.

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E-mailed Resolution

The risk that an informal e-mail vote will prove problematic is small if the decision is unanimous, if no one litigates to pursue an objection or if no opinion of counsel is required. Nonetheless, directors should protect the integrity of their decisions by adhering to the statutory procedures and ensuring that through active and meaningful participation they stay informed and comply with their fiduciary duty of care.

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